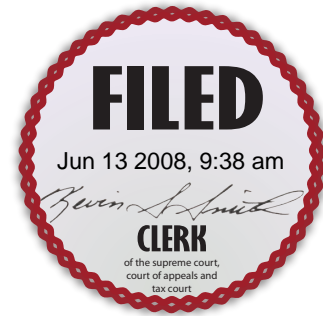


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**JAMES E. AYERS**  
Wernle, Ristine & Ayers  
Crawfordsville, Indiana

ATTORNEY FOR APPELLEE:

**WILLIAM A. GOEBEL**  
Goebel Law Office  
Crawfordsville, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

IN RE: THE MARRIAGE OF )

JOELLEN NAGEL, )

Appellant-Petitioner, )

vs. )

ERIC NAGEL, )

Appellee-Respondent. )

No. 54A01-0802-CV-53

---

APPEAL FROM THE MONTGOMERY SUPERIOR COURT  
The Honorable Thomas K. Milligan, Judge  
Cause No. 54C01-9705-DR-180

---

**June 13, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-petitioner Joellen Nagel appeals the trial court's order denying her petition to modify the child support obligation of appellee-respondent Eric Nagel. Specifically, Joellen argues that the trial court erroneously found a provision in the parties' prior child support agreement to be ambiguous, striking it from the document and denying her petition. Finding no reversible error, we affirm.

### FACTS

On July 16, 1999, Joellen and Eric were divorced. Two children were born of the marriage, and although the parties shared legal custody, Joellen had primary physical custody of both children. In 2004, Joellen and Eric agreed that Eric's child support obligation was \$600 per month.

On July 1, 2005, Eric filed a petition to modify custody, seeking, among other things, a decrease in the amount of his monthly support obligation. Eventually, Eric and Joellen reached an agreement on several topics, including visitation and child support. Their agreement was memorialized in a September 7, 2005, order providing that Eric's new monthly support obligation was \$550 and that "the parties shall review the issue of support annually, beginning on or before February 15, 2007." Appellant's App. p. 60.

On April 9, 2007, Joellen filed a petition to modify child support, seeking an increase in the amount of Eric's monthly support obligation. Following a June 28, 2007, hearing, the trial court denied Joellen's petition:

... A dispute has arisen between the parties as to the meaning of the phrase "review the issue of support" and the intention of the parties when they entered into the [September 2005] agreement which resulted in the use of that language.

\*\*\*

. . . At the hearing [on Joellen's petition to modify support, Eric] took the position that although the agreement called for the review or re-evaluation of support, that the agreement did not contemplate modification of support unless the support guidelines were satisfied as to the requirement of a twenty percent deviation from the previous support order . . . .

The difference between [Eric and Joellen's] positions turned on the interpretation of the language used in the order and the intention of the parties when they entered into the agreement negotiated between themselves.

The interpretation and argument made by each side is reasonable and plausible given the language utilized by the parties and by the Court. The terms re-evaluate, review and revisited are all terms that are incomplete in themselves in that the agreement does not give any indication as to what should happen as a result of the review, the revisiting, and the re-evaluation. . . .

. . . The Court finds that this particular term of the contract is vague and for that reason is not enforceable. . . .

For the foregoing reasons the Court finds that the Petition to Increase the Support should be denied and the present support should continue until further order of the Court.

Appellant's App. p. 8-9. Joellen now appeals.

### DISCUSSION AND DECISION

Joellen argues that the trial court erroneously denied her petition to modify Eric's child support obligation. We review a trial court's ruling on a petition to modify child support for an abuse of discretion. Robles v. Robles, 855 N.E.2d 1049, 1055 (Ind. Ct. App. 2006). In conducting our analysis, we will neither reweigh the evidence nor assess witness credibility. Id. Instead, we will consider only the evidence most favorable to the judgment and the reasonable inferences that may be drawn therefrom. Id.

As a general matter, Indiana Code section 31-16-8-1 governs the modification of child support orders:

- (a) Provisions of an order with respect to child support or an order for maintenance . . . may be modified or revoked.
- (b) Except as provided in section 2 of this chapter, modification may be made only:
  - (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
  - (2) upon a showing that:
    - (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
    - (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

The fact that the child support order that Joellen seeks to modify was based on an agreement between Joellen and Eric does not necessarily change the basic analysis to be applied. It is well established that “despite an agreement between the parents regarding child support, the child support order may be subsequently modified.” In re Marriage of Kraft, 868 N.E.2d 1181, 1188 (Ind. Ct. App. 2007). In considering the analysis to be applied to a petition to modify a child support order that was based on an agreement between the parties, the Kraft court relied on language used by our Supreme Court:

“This statutory standard [since repealed, amended, and recodified at Indiana Code section 31-16-8-1] is applicable to all support orders, regardless of the terms. In other words, the fact that a child support order has been entered pursuant to the terms of a settlement agreement,

even where, as here, it is intended as forever determinative by the parties, is of no consequence to the question whether the order should subsequently be modified.”

Id. (quoting Meehan v. Meehan, 425 N.E.2d 157, 160 (Ind. 1981)). The Kraft court further analyzed the Meehan decision:

The [Meehan] court emphasized the importance of adhering to the statutory language as follows:

“Cognizant that the specter of a rule whereby support agreements were unilaterally binding would cloud parties’ negotiations, the legislature provided them with a mutually-applicable standard, based on equitable considerations, against which the parties can assess the likelihood that a support agreement will subsequently be modified. If our courts deviate even slightly from this delicate balance struck by the legislature, parties will be inhibited in their negotiations and the purpose of the [Dissolution of Marriage] Act will be frustrated.”

\*\*\*

Following the Indiana Supreme Court’s directives in Meehan, we conclude that we should interpret Ind. Code § 31-16-8-1 as it is written regardless of whether the child support order has been entered pursuant to the terms of a settlement agreement and regardless of whether the agreement to pay child support is in excess of the guidelines.

Kraft, 868 N.E.2d at 1188-89 (quoting Meehan, 425 N.E.2d at 160) (emphasis added).

Here, the parties agreed—with the agreement memorialized in the trial court’s 2005 support order—to “review the issue of support annually, beginning on or before February 15, 2007.” Appellant’s App. p. 60. The trial court found this provision to be ambiguous because Joellen and Eric understood it differently. Specifically, Joellen believed that this provision meant that, beginning in 2007, the parties would redetermine their respective child support obligation annually based on the previous year’s income. Eric, on the other hand, believed

that this provision meant what it said—an annual review would be conducted—and did not understand that he had waived the requirements contained in Indiana Code section 31-16-8-1(b)(2), specifically, the 20% deviation requirement.

The terms of a contract are not ambiguous because controversy exists between the parties concerning the proper interpretation of terms. Kiltz v. Kiltz, 708 N.E.2d 600, 602 (Ind. Ct. App. 1999). Thus, the mere fact that Joellen and Eric have a genuine disagreement about the meaning of the provision at issue does not necessarily render it ambiguous. And indeed, having reviewed the order in its entirety, we do not find the provision to be ambiguous. It means what it says—the parties will review their child support obligations annually, beginning in 2007. Moreover, nothing in the document waives the requirements contained in Indiana Code section 31-16-8-1 that must be met for a child support order to be modified. Assuming solely for argument's sake that it is possible to waive those requirements—a dubious proposition at best, given Meehan and Kraft—we conclude that the parties would have had to include an explicit provision to that effect for it to be a valid waiver. Here, nothing in the order refers to such a waiver. Accordingly, we find that Joellen must prove that modification is warranted pursuant to Indiana Code section 31-16-8-1.

Joellen argues that this interpretation renders the provision meaningless. We cannot agree. As explained by Eric,

[i]t is clear from the terms of the 2005 Agreement that the intent of the annual review was as an informal mechanism meant to save parties attorney fees. Each party was under a court order to provide their prior year's income to the other party without any further court order in order for support to be re-evaluated.

Appellee’s Br. p. 15. Thus, the provision requires Joellen and Eric to share their income information with one another, thereby saving attorney fees and judicial resources. It does not, however, relieve either party of the obligation to file a petition to modify child support pursuant to Indiana Code section 31-16-8-1 if they believe that modification is warranted.

Ultimately, therefore, we find that the trial court erroneously concluded that the provision is ambiguous. In our view, the provision is unambiguous and has a clear purpose. Although the trial court erred in interpreting the agreement, we agree with the outcome—dismissing Joellen’s petition to modify—because Joellen has not alleged “changed circumstances so substantial and continuing as to make the terms unreasonable” or that Eric is paying child support in an amount “that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines . . . .” I.C. § 31-16-8-1(b). We note, however, that she would be free to file a new petition to modify asserting that modification is warranted pursuant to Indiana Code section 31-16-8-1.<sup>1</sup>

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.

---

<sup>1</sup> To the extent that Joellen argues that the amount of Eric’s monthly child support obligation as set forth in the 2005 order deviates from the amount suggested by the Child Support Guidelines, that the trial court did not include a written finding supporting a deviation from the Guidelines, and that, consequently, the 2005 order was an abuse of the trial court’s discretion, we merely note that Joellen has waived this argument by failing to appeal that order when it was entered. Moreover, even if she had appealed, we note that inasmuch as she explicitly agreed to the terms of the order, it would have been found that she invited any alleged errors.